Supreme Court, U.S.
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82-1027

No. ....

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1982

GOLDEN RAIN FOUNDATION OF LAGUNA HILLS,

Appellant,

vs.

LAGUNA PUBLISHING COMPANY,

Appellee.

MOTION TO DISMISS

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Appellee in the above-entitled case moves to dismiss the appeal on the following grounds:

I. A final judgment has not been rendered in this case in the highest state court available, therefore, the jurisdiction of the United States Supreme Court pursuant to the provisions of 28 U.S.C. Section 1257(2) should not be exercised in this case.

II. Appellant's appeal to the United States Supreme Court from the final order of the California Supreme Court should be dismissed as the decision of the California Court of Appeal,

Fourth Appellate District, Second Division, dated May 18, 1982, is the final decision of the highest state court available from which the appeal should have been taken.

III. The California Court of Appeal, Fourth District, Second Division, that being the highest state court in which a decision could be had in this case, based its decree expressly upon a substantial and sufficient nonfederal ground, and the Supreme Court of the United States should not take jurisdiction to review the decree.

STATEMENT

On October 26, 1981, the Court of Appeal for the Fourth District of the State of California, Division Two, rendered its opinion after the second hearing in this case. In disposing of the case the Appellate Court directed the trial court:

"...upon due application of plaintiff, to try, with a jury if requested, those issues of damages arising from the illegality of the exclusion of the Laguna News-Post from Leisure world, namely: (1) whether plaintiff

suffered any damages caused by its illegal exclusion from Leisure World as measured by sections 1708 and 3333 of the Civil Code; (2) whether there was any concerted action or agreement between Golden Rain and Golden West, per section 16720, subdivision (a) of the Business and Professions Code, which caused the unconstitutional exclusion of the Laguna News-Post from Leisure World such as to constitute an unreasonable restraint of trade; and (3) whether there were any actual damages proximately resulting from any such unreasonable restraint of trade over the four years next preceding the filing of the action of assessment per section 16750.1 of the Business and Professions Code." Laguna Publishing Co. v. Golden Rain Foundation of Laguna Hills, 131 Cal.App.3d 816, 182 Cal.Rptr. 813, 837 (1982).

Subsequently, Appellant's Petition for Rehearing in the Court of Appeal and Petition for Hearing by the California Supreme Court were denied. And, on October 19, 1982, Appellant filed a Notice of Appeal to the United States Supreme Court wherein it indicates as

follows:

> "...pursuant to the provisions of 28 U.S.C. section 1257(b), defendant and respondent Golden Rain Foundation of Laguna Hills ("Golden Rain") hereby appeals to the United States Supreme Court from the final order of the California Supreme Court dated August 18, 1982, denying hearing of Golden Rain's appeal from the decision of the California Court of Appeal, Fourth Appellate District, Second Division, dated May 18, 1982."

In furtherance of its appeal, Appellant filed a Jurisdictional Statement on December 13, 1982, attempting to establish the jurisdiction of the United States Supreme Court over this case.

On October 28, 1982, Appellee's motion to advance the matters remanded for trial on the trial calendar of the Superior Court of the State of California for the County of Orange, and to set it at an early date was granted and a Mandatory Settlement Conference was set for April 8, 1983, with a trial to follow on April 11, 1983.

Appellant has filed a motion to vacate the Mandatory Settlement Conference and

said motion is presently set for hearing on January 13, 1983.

ARGUMENT

I. The United States Supreme Court Should Not Exercise Jurisdiction Over This Case Because A Final Decision Has Not Been Rendered By The Highest State Court Available In California.

Appellant's reference to a final decision of the issues in this case having been rendered when the California Supreme Court denied its petition for a hearing is in error. In fact, the Appellate Court remanded the case to the trial court for trial of the damages issues. There has not been rendered a final decision of all of thc issues in this case by any state court to date.

This court discussed the issue of the requirement of a final judgment from the highest state court available as a prerequisite to exercise jurisdiction in Republic Natural Gas Co. v. Oklahoma, 334 U.S. 66, 92 L.Ed. 1215, 1219 (1948). There, this court held as follows:

"Ever since 1789, Congress has granted this court the power of review in

in State litigation only after 'the highest court of a State in which a decision in a suit could be had' has rendered a 'final judgment or decree.' § 237 of the Judicial Code, 28 UCSA § 344, 8 FCA title 28, §, rephrasing § 25 of the Act of Sept. 24, 1789, 1 Stat 73, 85, c 20. Designed to avoid the evils of piecemeal review, this reflects a marked characteristic of the federal judicial system, unlike that of some of the States. This prerequisite for the exercise of the appellate powers of this Court is especially pertinent when a constitutional barrier is asserted against a State court's decision on matters peculiarly of local concern. Close observance of this limitation upon the Court is not regard for a strangling technicality. History bears ample testimony that it is an important factor in securing harmonious State-federal relations.

"No self-enforcing formula defining when a judgment is 'final' can be devised. Tests have been

indicated *which are helpful in giving direction and emphasis to decision from case to case. Thus, the requirement of finality has not been met merely because the major issues in a case have been decided and only a few loose ends remain to be tied up -- for example, where liability has been determined and all that needs to be adjudicated is the amount of damages. Bruce v. Tobin, 245 US 18, 62 L ed 123, 38 S Ct 7; Martinez v. International Bkg. Corp., 220 US 214, 223, 55 L ed 438, 443, 31 S Ct 408; Mississippi C. R. Co. v. Smith, 295 US 718, 79, L ed 1673, 55 S Ct 830. On the other hand, if nothing more than a ministerial act remains to be done, such as the entry of a judgment upon a mandate, the decree is regarded as concluding the case and is immediately reviewable. Tippecanoe County v. Lucas, 93 US 109, 23 L ed 822; Mower v. Fletcher, 114 US 127, 29 L ed 117, 5 S Ct 799." (emphasis added)

Clearly the damages issues, as set forth in the Statement (supra), upon which the Appellate Court remanded this

case to the trial court for determination, require substantially more be done by the trial court than a ministerial act such as the entry of a judgment upon a mandate. In fact, in its motion to vacate the trial date appellant states that the trial currently set "... would be lengthy and complex." (Appendix A at p.6)

II. Appellant's Appeal To The United States Supreme Court From The Final Order Of The California Supreme Court Should Be Dismissed As The Decision Of The California Court Of Appeal, Fourth Appellate District, Second Division, Dated May 18, 1982, Is The Final Decision Of The Highest State Court Available From Which The Appeal Should Have Been Taken.

In Michigan v. Wisconsin Pipe Line Co. v. Calvert, 74 S.Ct. 396, 347 U.S. 396, 397, 398 (1954), this court dismissed an appeal taken from a ruling by the Texas Supreme Court which had, in effect, denied a hearing of the matter which had been ruled on by the Civil Court of Appeals of the state on the grounds that the refusal of the State Supreme Court to hear the case rendered the decision of the

lower appellate court the final judgment from the highest state court available. The appeal should have been taken from the decision of the lower appellate court.

The reasoning of this court in reaching its decision was as follows:

"We think that appeals in these cases were properly from the Court of Civil Appeals. In American Ry. Exp. Co. v. Levee, 1923, 263 U.S. 19, 44 S.Ct. 11, 12, 68 L.Ed. 140, the Supreme Court of Louisiana had refused a writ of certiorari to the State Court of Appeal '"for the reason that the judgment is correct."' Mr. Justice Holmes, speaking for a unaminous Court, said:

> '... (U)nder the Constitution of the State the jurisdiction of the Supreme court is discretionary . . . and although it was necessary for the petitioner to invoke that jurisdiction in order to make it certain that the case could go no further, . . . when the jurisdiction was declined the Court of Appeal was shown to be the highest Court of the State in which a decision could be had. Another

section of the article cited required the Supreme Court to give its reasons for refusing the writ, and therefore the fact that the reason happened to be a opinion upon the merits rather than some more technical consideration, did not take from the refusal its ostensible character of declining jurisdiction. Western Union Telegraph Co. v. Crovo, 220 U.S. 364, 366, 31 S.Ct. 399 (400), 55 L.ed. 489; Norfolk & Suburban Turnpike Co. v. Commonwealth of Virginia, 225, U.S. 264, 269, 32 S.Ct. 828 (830), 56 L.Ed. 1082. Of course the limit of time for applying to this court was from the date when the writ of certiorari was refused.' 263 U.S. at pages 20-21, 44 S.Ct. at page 12.

"In Lone Star Gas Co. v. State of Texas, 1938, 304 U.S. 224, 551, 58 S.Ct. 883, 82 L.Ed. 1304, with the present Texas procedural provisions in effect, this Court's mandate issued to the Court of Civil Appeals in a case where the State Supreme Court

had 'refused' writ of error. See also United Gas Public Service Co. v. State of Texas, 1937, 301 U.S. 667, 57 S.Ct. 921, 81 L.Ed. 1332.

"Accordingly the appeals in Nos. 199 and 201, from the supreme Court of Texas, are dismissed."

This holding is directly applicable to the case presently before this court. As is stated in its Notice of Appeal (Appendix B), Appellant is appealing from the order of the California Supreme Court denying a hearing, and not from the decision of the lower Appellate Court which became final on the denial of a hearing by the Supreme Court.

III. The California Court Of Appeal, Fourth District, Second Division, That Being The Highest State Court In Which A Decision Could Be Had In This Case, Based Its Decree Expressly Upon A Substantial And Sufficient Non-federal Ground, And The Supreme Court Of The United States Should Not Take Jurisdiction To Review The Decree.

The case law is clear that where the highest state court bases its decree on substantial and sufficient nonfederal

grounds, they should not take jurisdiction to review the decree, Black v. Cutter Laboratories, 76 S.Ct. 824, 351 U.S. 292, 100 L.Ed. 1188 (1956), rehearing denied 77 S.Ct 21, 352 U.S. 859, 1 L.Ed.2d 69; Durley v. Mayo, 76 S.Ct. 806, 351 U.S. 277, 100 L.Ed. 1178 (1956), rehearing denied 77 S.Ct. 22, 352 U.S. 859, 1 L.Ed. 2d 69.

An examination of the decision rendered by the Court of Appeals in this case clearly shows that imposition on privacy and property rights which are the substance of the issues raised by Appellant herein, were analyzed and determined through the application of substantial and sufficient nonfederal, state grounds, as indicated by the following quotations from the decision:

> "In the current petition for rehearing Golden Rain devotes considerable ink in support of its contention that there could have been no discrimination practiced against plaintiff's newspaper because, 'Discrimination presupposed meaningful similarity.' We are indebted to counsel for Golded Rain for supplying us the concise terms we have labored to locate.

'Meaningful similarity,' that's it! On the undisputed facts before us there could be no more meaningful similarity possible that emerges in the comparison of the Leisure World News and plaintiffs newspaper. That meaningful similarity lies in their common role as competitors for the advertising dollars to be spent in this marketing area, an area where the Leisure World News has exclusive access to the residents of Leisure World and from where plaintiff was barred from making the unsolicited deliveries available to the Leisure Would News. Thus, the legal conclusion that there was unconstitutional discrimination practiced against plaintiff's newspaper is inexcapable.

"Based upon the foregoing, keeping in view the greater status of the rights of free speech and free press existing under the California Constitution as delineated in Pruneyard, and keeping in mind also that discriminatory proscription of free speech on private property may even be questionable under the federal Constitution, as suggested by Lloyd, we hold that

Golden Rain, actin with the implicit sanction of the state's police power behind it, impermissibly discriminated against the free speech and free press rights of plaintiff, guaranteed to in under the state Constitution, by excluding it from Leisure World after it, Golden Rain, without authority from the residents of Leisure World, had chosen to permit the unsolicited delivery of the Leisure World News to the residents of Leisure World. As a consequence, for so long as golden Rain permits the unsolicited delivery of the Leisure World News to the residents of Leisure World, then it connot permissibly discriminate against plaintiff's opportunity to communicate with the residents of Leisure World by excluding unsolicited delivery of its newspaper to these same residents.

"V. Defendant Golden Rain has argued that to subject the resident of Leisure World to unsolicited delivery of plaintiff's newspaper would frustrate their investment expectations of privacy and freedome from the intrusions of those who have not been invited, citing Kaiser Aetna v. United

States (1979) 444 U.S. 164 (62 L.Ed.2d 332, 100 S.Ct. 383). Without more we would agree with such contention; however, it was the management of Leisure World itself which let down the bars, and Golden Rain which suffered the discrimination to continue. It was thus the choice of Golden Rain which resulted in the threat of any claimed encroachment on the privacy of the residents of Leisure World. In this vein, it is pertinent to observe, if the residents of Leisure World do not want unsolicited, give-away newspapers delivered to their homes by live carrier, then Golden Rain should cease its discrimination and exclude them all, including the Leisure World News.

"Actually, as a practical matter, in response to the turgid rhetoric about the imposition on privacy and property rights which admission of plaintiff's newspaper to Leisure World would supposedly represent, it is fair to say that there would be no imposition of substance. Parenthetically, what we see happening is plaintiff's delivery personnel being

screened in the same way that the carriers of the Los Angeles Times are screened; we see plaintiff's delivery personnel being instructed that they are permitted to move about the streets of Leisure World during certain daylight hours on certain days; we see plaintiff's delivery personnel placing copies of the Laguna News-Post on the front steps or porch of each residence of Leisure World in much the same manner as would a United States Postal Service employee deliver the newspaper if it were mailed in. This hardly represents an assault upon the privacy of any resident of Leisure World beyone what is already occurred, <u>especially when no resident of Leisure World has actually requested delivery of the Leisure World News either</u>.

"Nevertheless, if this activity represents an unacceptable intrusion upon the privacy of the residents of Leisure World, a privacy which it is argued they paid for when they bought gomes there, then Golden Rain should cease its discrimination and exclude <u>all</u> newspapers to which individual residents have not <u>personally</u>

subscribed.

"The rule we announce as the basis for resolution of this phase of the case will not result in requiring unrestricted admittance to Leisure World of religious evangelists, political campaigners, assorted salespeople, signature solicitors, or any other uninvited persons of the like. It will compel admission only of those who wish to deliver a newspaper like the Leisure World News, 'like' in the sense that it is a competitor of Leisure World News for the same advertising dollars to be spent by businesses in Southern Orange County. In short, for purposes of acoiding discrimination against the state constitutional guarantees of free speech and free press, the right of any and all to enter this private, gated community to exercise this state constitutional right must be exactly measured by the right accorded to one, both as to the nature of the activity of that one as well as to the conditions of his admission. Under such a rule, the owners of this private property still remain in <u>complete</u>

control of who shall enter Leisure World, while Golden Rain is yet required only to act fairly and without discrimination toward others in the exercise of their state constitutional rights of free speech and free press which rights Golden Rain itself has chosen to accord exclusively to the Leisure World News while acting wholly beyond the knowledge and complicity of any resident of Leisure World.

"VI. In one of the earlier petitions a worried concern was voiced that the rule here announced would confer a kind of 'equal time' entitlement on any who wished to enter should persons of opposite or different views have been 'invited' into Leisure World to speak or to entertain. To note these objections to the rule is itself enough to demonstrate how wide they are of the mark. The rule we have announced has nothing to do with instances where persons are <u>invited</u> into Leisure World by its <u>residents</u>. The promise on which the rule here announced has derived is the discrimination by Golden Rain which has allowed

an exclusive opportunity to Golden West to deliver its Leisure World where, as to those residents individually, such deliveries are wholly unsolicited. To this extent, Golden Rain, with absolutely no advice from or consultation with the actual residents, by its own choice and not that of the residents, has rendered Leisure World an area where a singular member of the public is admitted for this limited purpose. Thus, the rule has absolutely no application to any person who or activity which the residents of Leisure World may choose to invite to come in.

"The principal argument advanced by Golden Rain in its earlier petition for rehearing which challenged our initial decision was also that it contravened constitutionally guaranteed rights to privacy and freedom of association. No good purpose would be served here to respond specifically to each of the points contained in the ten pages of learned constitutional discourse offered under point IV of Golden Rain's earlier petition for rehearing except to say that we can only agree

with the propositions there recited. The problem with the petition is that it ignores the realities of this case.

"We have already noted the letter directed to plaintiff by the president of Golden Rain which closed with the statement that 'you are therefore permitted to deliver newspapers within leisure World so long as you abide by the above regulation' which meant that plaintiff could enter Leisure World and deliver its newspaper to any of its 'subscribers' to give-away newspapers which subsist entirely by advertising. However, the point remains that Golden Rain specifically indicated that it had no objection to associating with plaintiff's carriers provided those carriers were inside the gates of Leisure World solely to deliver Plaintiff's newspaper to its 'subscriber.' Just how these very same carriers would ipso facto become a threat to the freedom of association and right of privacy within Leisure World just because they would be delivering plaintiff's newspaper on an unsolicited instead of a sub-

scription basis escapes us.

"Similarly, much is made of the fact that residents of Leisure World actually performed the distribution of the Leisure World News, the implication being that some infectious, undisiplined rabble would overrun Leisure World if plaintiff were allowed to distribute its newspaper there.

"If there is truly a concern, we see no legal problem in Golden Rain's imposing a regulation which would require employment of only Leisure Would residents for delivery of any unsolicited publication. This would fall well within the ambit of Justice Traynor's time, place, and manner rule in Hoffman. Otherwise, Golden Rain could prescribe that any resident who elected not to receive the unsolicited delivery would need only notify Golden Rain of such wishes and that would terminate delivery at that residence.

"The significant point is that we see nothing in the record which indicates that the individual residents of Leisure World have expressed themselves on what give-away newspaper

is to be excluded. The discriminatory exclusion has been imposed solely by the owner of the common areas, i.e., the owner of the streets and sidewalks, not the owners of actual residences. Thus, we are forced to conclude that the real reason for the exclusion of the plaintiff's newspaper had and continues to have little if anything to do with an actual concern for the preferences of the residents as to whom they shall associate with. In short, at the time this litigation began and continuing to the present, the distribution to the residents of Leisure World of the Leisure World News was and is just as much unsolicited by them as was and is that of the Laguna News-Post." (131 Cal.App.3d 816, 182 Cal.Rptr. 829, 830, 831, 832)

The only effect that this ruling could possibly have on the rights to privacy and property to which the residents of Leisure World are entitled is to disallow them to abuse those rights by using them as a justification for the specific type of discriminatory conduct exemplified by the narrow factual circumstances of this case.

From a realistic standpoint, the

questions presented by the appeal are moot. Both papers have been sold to the same publisher and the discriminatory conduct has ceased.

CONCLUSION

For the aforegoing reasons, it is respectfully submitted that this appeal be dismissed or the decision of the California Court of Appeals be affirmed.

January 7, 1983.

Respectfully submitted,

W. MIKE MC CRAY
Attorney for Appellee

APPENDIX A

MOTION TO VACATE TRIALDATES

TO: Plaintiff, LAGUNA PUBLISHING COMPANY, and its attorneys of record:

PLEASE TAKE NOTICE that on Thurs., the 13th day of January, 1983, at the hour of 9:30 a.m., or as soon thereafter as counsel can be heard, in Department 1 of the above-entitled Court, located at 700 Civic Center Drive West, Santa Ana, California, Golden Rain Foundation of Laguna Hills will bring on for hearing a motion to vacate the mandatory settlement conference and trial dates currently set herein.

This motion is made primarily on the ground that Golden Rain has perfected its appeal to the Supreme Court of the United States in this matter and, therefore, pursuant to Code of Civil Procedure section 916, this Court is without jurisdiction to proceed as all matters are now automatically stayed and on the additional ground that the interests of justice so require.

This motion will be and is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities

attached hereto, the Declaration of Dorothea Summerell attached hereto, all the pleadings and papers on file herein, and such other and further evidence as may be received on the hearing of this matter.

Dated: December 22, 1982

O'MELVENY & MYERS
Girard E. Boudreau, Jr.
Dorothea Summerell
Attorneys for Defendant
Golden Rain Foundation of
Laguna Hills

MEMORANDUM OF POINTS AND AUTHORITIES

I

STATEMENT OF FACTS

Golden Rain Foundation of Laguna Hills ("Golden Rain") is a private, non-profit corporation. Golden Rain was chartered to manage the private, residential retirement community of Leisure World and functions as a sort of homeowners' association. Most of the services that Golden Rain provides for the benefit of the residents are accomplished through a contract with a professional management company.

In 1967 and again in 1973, plaintiff

the Laguna Publishing Company, requested general access to Leisure World for the purpose of distributing, on an unsolicited basis, its "throw away" advertising newspaper, the Laguna News-Post. Plaintiff's request was denied. In October of 1973, plaintiff brought suit, alleging, inter alia, that its federal and state constitutional rights of free speech and press had been violated. Named as defendants were Golden Rain, its current and former management companies, the publisher of Leisure World's own community newsletter, and several officers and directors of the foregoing.

The case was tried to a jury before the Honorable Walter W. Charamza from December 5, 1977, through April 28, 1978. The jury returned a complete defendants' verdict, and plaintiff appealed, claiming that the trial court had erred in refusing to allow plaintiff to refer to or to present evidence concerning alleged violations of its constitutional rights. The Court of Appeal reversed, holding that plaintiff's state constitutional right of free speech had been abridged when plaintiff was excluded from Leisure World. Two rehearings followed on this

and other issues. On the second rehearing, the Court of Appeal ordered a re-trial on the following issues:

> (1) whether plaintiff suffered any damages caused by its illegal exclusion from leisure World as measured by sections 1708 and 3333 of the Civil Code; (2) whether there was any concerted action or agreement between Golden Rain and Golden West, per section 16720(a) of the Business and Professions Code, which caused the unconstitutional exclusion of the Laguna News-Post from Leisure World such as to constitute an unreasonable restraint of trade; and (3) whether there were any actual damages proximately resulting from any such unreasonable restraint of trade over the four years next preceding the filing of the action for assessment per section 16750.1 of the Business and Professions Code.

The decision of the Court of Appeal upon second rehearing was filed on May 18, 1982, and, on June 16, 1982, the Court of Appealdenied Golden Rain's petition for third rehearing. On August 18, 1982, the Supreme Court of the State of

California likewise denied Golden Rain's petition for hearing, and the decision of the Court of Appeal thereby became final. On October 6, 1982, a substitution of attorneys was filed, and O'Melveny & Myers became counsel of record for Golden Rain. A Notice of Appeal to the United States Supreme Court was filed on October 18, 1982, pursuant to the provisions of section 1257(2) of the United States Judicial Code. (See Exhibit "A" to Declaration of Dorothea Summerell.)

On October 28, 1982, plaintiff brought on for hearing a motion to advance this matter on the trial calendar and to set it for retrial at an early date. Golden Rain opposed the motion on the ground that it had filed a Notice of Appeal to the United States Supreme Court and anticipated filing its Jurisdictional Statement shortly thereafter. Even though the appeal had not technically been perfected, Golden Rain did not fully brief the grounds of its objection to the Motion for Advanced Trial Setting as it seemed inconceivable that the Motion would be granted while the case was still on appeal. Notwithstanding the

complexity of the case and the necessity of a resolution of the issues on appeal prior to any subsequent trial, the Court surprisingly granted plaintiff's Motion and a mandatory settlement conference was set for April 8, 1983, with a trial to follow on April 11, 1983.

On November 9, 1982, the Supreme Court of the United States (Rehnquist, J.) issued an order extending Golden Rain's time for docketing its appeal to December 20, 1982, and on December 13, 1982, Golden Rain filed its Jurisdictional Statement in the United States Supreme Court. (See Exhibits "B" and "C" to Declaration of Dorothea Summerell.) The Supreme Court has not yet issued an order noting probable jurisdiction, nor has it otherwise acted on the appeal. (Declaration of Dorothea Summerell, p. .)

II

ARGUMENT

Under California Code of Civil Procedure section 916(a) all proceedings in the trial court are automatically stayed when an appeal is "perfected." Gold v. Superior Court, 3 Cal. 3rd 275, 90 Cal. Rptr. 161 (1970); Sacks v.

Superior Court, 31 Cal. 2nd 537, 190 P.2d 602 (1948); Hollaway v. Scripps Memorial Hospital, 111 Cal. App. 3rd 719, 168 Cal. Rptr. 782 (1980); 6 B. Witkin, California Pricedure, "Appeal," § 4, p. 4021 (2d ed. 1971). Section 916(a) does not require that an order noting probable jurisdiction issue before the automatic stay becomes effective. Thus, Golden Rain's appeal was perfected as of the moment it filed its Jurisdictional Statement. (See Rules 10.1 & 12 of the United States Supreme Court Revised Rules.)

The trial currently set to comment in April would be lengthy and complex. As can be seen from the copy of the Jurisdictional Statement attached to the Summerell Declaration, the issues raised on appeal are substantial and go to the heart of the matters which are to be re-tried in the event the decision of the District Court of Appeal is not reversed. It would be foolhardy at best to proceed with this matter until such time as the Supreme Court of the United States has acted. Clearly, this Court should vacate the date for the mandatory settlement conference

and trial pending the outcome of the appeal.

APPENDIX B

NOTICE OF APPEAL

Court of Appeal, State of California, Fourth District, Second Division.

Laguna Publishing Company, etc., Pliantiff and Appellant, v. Golden Rain Foundation of Laguna Hills, etc., Defendant and Respondent, 4 Civil No. 20650, OCSC Case No. 207112.

Filed: October 19, 1982.

To: LAGUNA PUBLISHING COMPANY, plaintiff and appellant herein, and its attorneys of record:

PLEASE TAKE NOTICE that pursuant to the provisions of 28 U.S.C. section 1257(b), defendant and respondent Golden Rain Foundation of Laguna Hills ("Golden Rain") hereby appeals to the United States Supreme Court from the final order of the California Supreme Court dated August 18, 1982, denying hearing of Golden Rain's appeal from the decision of the California Court of Appeal, Fourth Appellate District, Second Division, dated May 18, 1982.

Dated: October 11, 1982

O'MELVENY & MEYERS

Girard E. Boudreau, Jr.

Phillip R. Kaplan

Dorothea Summerell
By /s/ Girard E Goudreau, Jr.
Attorneys for Defendant
GOLDEN RAIN FOUNDATION
OF LAGUNA HILLS